No. 80-5303

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

ANTONIA BELTRAN, individually and on behalf of all others similarly situated,

Petitioner,

v.

BEVERLEE A. MYERS, individually and in her official capacity as Director of the California State Department of Health; and ELISABETH LYMAN, individually and in her official capacity as Deputy Director of the State Department of Health,

Respondents.

MOTION OF PETITIONER FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION

GILL DEFORD
NEAL S. DUDOVITZ
National Senior Citizens Law Center
1636 West 8th Street, Suite 201
Los Angeles, California 90017
(213) 388-1381

Attorneys for Petitioner

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MOTION OF PETITIONER FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION

After Petitioner's brief was filed, the President signed legislation, Pub.L. 96-611, §5, -- Stat. ---, on December 28, 1980, which has a direct bearing on the issue of this case.[1/] Since the nature of this legislation, and its indisputable purpose as explained in its legislative history, resolve the issue of this case for certain members of the class, Petitioner requests that the Court reverse summarily, pursuant to Rule 23.1, Rules of the Supreme Court. Furthermore, since the new federal statute creates different concerns about the propriety of the California provision after its effective date (July 1, 1981), it is appropriate that the case be remanded for those members of the class who will apply after that date.

I. THE NEW FEDERAL LEGISLATION RESOLVES ANY REMAINING DOUBT THAT EXISTING FEDERAL LAW PRECLUDES CALIFORNIA, AND WILL PRECLUDE IT UNTIL JULY 1, 1981, FROM EMPLOYING ANY MEDICAID TRANSFER OF ASSETS RULE, THEREBY REQUIRING SUMMARY REVERSAL

A. The new law was explicitly intended by Congress to change a perceived "inadequacy" in the existing federal Medicaid statute.

Plaintiffs have argued at all levels of this litigation that California could not apply a transfer of assets rule

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1/ Since Petitioner is proceeding in forma pauperis, her typewritten brief had to be received in the Clerk's office by December 11, thus precluding her from alluding to Congressional passage of this legislation, H.R. 8406, which occurred on December 13. See 126 Cong.Rec. S16504 et seq. (daily ed., Dec. 13, 1980).

since it represented a more restrictive treatment of the medically needy than of the categorically needy aged, blind, and disabled. Congress has previously recognized this, and has now passed legislation which is specifically intended to permit states to employ a transfer of assets rule against SSI applicants and against Medicaid applicants, including both the categorically and medically needy. Senator Long, who co-sponsored the amendment to H.R. 8406, which allows this, explains succinctly what the present law on this issue is:

> "In recent years a number of States have uncovered an abusive practice in which certain individuals transfer substantial assets to their families or to others in order to bring themselves down to the welfare eligibility level which will qualify them for payments under the supplemental security income (SSI) program and for fully paid medical care under the medicaid program. Unfortunately, the present law is so written as to make this subterfuge possible." 126 Cong.Rec. S16505 (daily ed., Dec. 13, 1980) (emphasis supplied).

While plaintiff disagrees with the Senator's subjective analysis, his conclusion, which is the same as that reached by other Senate and House members and committees, is determinative: until the federal law is changed, states which employ transfer rules are in violation of existing law. By definition, the fact that federal law does not presently permit transfer rules, and forbids states to apply prohibitions against them, has led Congress to pass this legislation.

The new legislation provides for a comprehensive resolution of the "problem", as the federal government now sees it. First, for applications for SSI after February, 1981, see Publ.L. 96-611, §5(c), resources transferred within the last 24 months will be considered available unless the applicant "furnishes convincing evidence to establish that the transaction was exclusively for" a purpose other than to obtain eligibility. Section 1613(c)(2) of the Social

Security Act, as added by Pub.L. 96-611, §5(a). In effect, this will result in a denial of SSI eligibility for 24 months after the date on which the resource was transferred.

The second part of the amendment deals exclusively with Medicaid eligibility. Pub.L. 96-611, §5(b). It adds a new provision to the Medicaid statute, section 1902(j) of the Social Security Act. First, it specifies that a state may amend its state plan to deny Medicaid to an individual who transfers in order to obtain eligibility, but, with one exception, the state must implement that procedure in a manner "no more restrictive than the procedure applied in section 1613(c) of this Act." Section 1902(j)(1) of the Social Security Act, as added by Pub. L. 96-611, §5(b). Through this subsection (j)(1), Congress has continued the general requirement that states' Medicaid eligibility conditions cannot be more restrictive than the SSI eligibility conditions, but can be less restrictive. Moreover, while the SSI transfer rule is mandatory, states have been given the option of applying one to Medicaid applicants.

The one exception to the requirement that the state impose a no less liberal Medicaid rule than that for SSI is set out in subsection (j)(2). It allows a state, in those instances in which the "uncompensated" portion of the transferred asset is valued at over $12,000, to impose a period of ineligibility greater than 24 months. By contrast, the SSI transfer rule in the new section 1613(c) of the Social Security Act (added by §5(a) of the new law) precludes a state from considering the transferred resource available after 24 months have elapsed. Thus, the longest conceivable period of ineligibility for SSI would be 24 months. Senator Long explained this one exception in these terms:

> "The amendment would permit States to establish disposal of assets disqualification rules for

medicaid purposes which differ in detail from the SSI rule. Generally, State rules could not be more restrictive than the federal SSI rule except that the period of disqualification could be longer than 24 months in cases where a very large disposal of assets -- more than $12,000 -- is involved." 126 Cong.Rec. S16505-16506 (daily ed., Dec. 13, 1980).

Subsection (j)(3) of the new Medicaid statute resolves any doubts which might otherwise have been created by allowing states to use a less restrictive Medicaid transfer rule than is used in the SSI program. It specifies that although an individual may be found ineligible for SSI under section 1613(c), the state may still provide Medicaid coverage under those rules which the state adopts pursuant to subsections (j)(1) and (j)(2). This provision guarantees that a state will be reimbursed for Medicaid coverage provided to an individual not eligible for SSI by reason of the SSI transfer provision in section 1613(c).2/

Finally, the effective date section, section 5(c), is explicitly only applicable to section 5(a), the amendment to the SSI statute (Title XVI of the Social Security Act).

2/ An example demonstrates how this might work. Pursuant to subsection (j)(2), a state might elect to employ a period of ineligibility greater than 24 months for an asset valued over $12,000, while deciding pursuant to subsection (j)(1) to apply the transfer rule only to transfers which take place twelve months prior to application for Medicaid. Thus, someone who transferred property worth $13,000 fifteen months prior to applying for SSI and Medicaid could be found ineligible for SSI, but eligible for Medicaid. Subsection (j)(3) thus ensures that states are not restricted to all aspects of the SSI transfer rule.

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Since the legislation was signed on December 28, 1980, the SSI transfer rule will take effect on March 1, 1981. Only applications for SSI after that date are subject to the transfer rule.

By contrast, there is no specific effective date section for that portion of the law which adds subsection (j) to the Medicaid statute. This provision therefore is subject to the law's general effective date of July 1, 1981. Pub.L. 96-611, §2. Thus, starting July 1, 1981, states may employ a limited transfer rule against Medicaid applicants.3/

3/ Setting a later effective date for the Medicaid rule represents a recognition of the more complicated process of introducing new Medicaid provisions. HHS will need to develop regulations to implement those provisions, and to specify the limits within which the states can establish their Medicaid transfer of assets rule. States which do not have transfer rules because they recognized their illegality or because they have been invalidated may want to consider adding such a provision, which will require state legislative and administrative action. States which have rules -- now illegal -- will have to determine whether those rules need to be altered to meet the federal requirements. And any state which opts to employ a transfer rule will have to decide whether to use the SSI rules or more liberal requirements, and whether to establish a longer period of ineligibility in the appropriate circumstance. Moreover, any state which decides to use such a rule will need to have its new state plan approved by HHS. See 1902(j)(1) of the Social Security Act, as added by Pub.L. 96-611, §5(b). In short, it is likely to require at least six months for the federal and state

(cont. on p. 6)

Consequently, for those members of the class who have applied for Medicaid, or who will apply prior to July 1, 1981, California is not permitted to employ a transfer of assets rule to deny eligibility. The sponsors of the bill were explicit about this, and the manner in which it was structured further indicates that they fully understood the correctness of plaintiff's position concerning the relationship between the SSI and Medicaid statutes. While the issue may not be subject to simple resolution for those class members who apply after the effective date, see infra, at 9-10, the present impropriety of the California transfer rule has now been conclusively and undoubtedly established.

B. In light of the explicit Congressional recognition of present federal law, the decision below should be reversed without further briefing or argument.

The courts below should have recognized the propriety of plaintiffs' claims, and this Court should have been in the position of simply affirming the decision of the Court of Appeals. This Court took that action in a case involving a similar intervening change in the law. In Lascaris v. Shirley, 420 U.S. 730 (1975), the Court considered New York's appeal of the decision of a three-judge court holding a portion of that State's AFDC law invalid as in conflict with the relevant portion of the Social Security Act. After this Court noted

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3/ (cont.)

bureaucracies to make the decisions and changes necessary to implement the Medicaid transfer rule. Until that time, though, there is no federal support for the application of a transfer of assets rule to Medicaid applicants.

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probable jurisdiction, the federal law was "amended ... expressly to resolve the conflict as to eligibility found ... to exist between the federal and state laws." 420 U.S. at 731. This Court thus affirmed, since the explicit change in the federal law rendered it clear that the state law prior to the amendment had been correctly perceived by the district court as in violation of federal law. The Court noted that there was "no occasion to prepare an extended opinion." Id., at 733.

The only distinctions between that case and this one are insignificant. In Lascaris, oral argument had taken place before the change in the federal law. But given the explicit purpose of Pub.L. 96-611, oral argument in this case will shed no further light on the issues. Whatever the precise contours of the new federal law, there can be no doubt that its express goal was to provide a federal basis for states to take action which is now totally impermissible.

Also, in Lascaris, the Court was affirming, rather than reversing. But that is a distinction without a difference. The Court can reverse summarily at this time, just as it could have if the intervening legislation had been signed before the petition for certiorari had been ruled on. Nothing in Rule 23.1 suggests that "a summary disposition on the merits" is limited to affirmances.

Indeed, on several recent occasions, this Court has recognized the propriety of reversing lower courts without full briefing and oral argument. Stone v. Graham, -- U.S. --, 101 S.Ct. 192 (1980), rev'g 599 S.W.2d 157 (Ky.1980); Allied Chemical Corp. v. Daiflon, Inc., -- U.S. --, 101 S.Ct. 188 (1980), rev'g sub nom. Daiflon, Inc. v. Bohanon, 612 F.2d 1249 (10th Cir. 1979); Hughes v. Rowe, -- U.S. --, 101 S.Ct. 173 (1980), rev'g 605 F.2d 559 (7th Cir. 1979). In those

cases, however, the legal issue was nowhere near as clear cut as in this instance. Stone v. Graham, supra, 101 S.Ct., at 194, 195 (Burger, Ch.J., Blackmun, Stewart, Rehnquist, JJ.) (dissenting from decision on merits or from decision not to give plenary consideration); Allied Chemical Corp. v. Daiflon, Inc., supra, 101 S.Ct., at 191 (Blackmun, White, JJ.) (dissenting from decision not to give plenary consideration); Hughes v. Rowe, supra, 101 S.Ct., at 179 (Burger, Ch.J., Stewart, and Rehnquist, JJ.) (dissenting from part or all of the decision on the merits or from decision not to give plenary consideration). Here, Congress, dissatisfied with existing law, has set a date for a change in that law. Until then, however, Congress has left no doubt that present federal law forbids the challenged California procedure. Had Congress passed that provision prior to this Court's decision to grant certiorari (on November 3, 1980), this would have been an ideal case to reverse without plenary consideration. The fact that the petition was granted, and briefing had begun, should not affect the propriety of summary reversal.

The California transfer rule is in direct violation of existing federal law, and will remain in violation at least until July 1, 1981. Relief must be provided both for past and continuing violations and to prevent future violations. This Court should therefore reverse with directions to enjoin the continued application of the transfer rule. Furthermore, it should remand to the Ninth Circuit with orders that a procedure be established for notifying class members of their right to obtain reimbursement through a state administrative process. Relief of this nature has been requested at every stage of this litigation, see Complaint (J.A. 11); Dawson v. Myers, 622 F.2d 1304, 1315 n.13

(9th Cir. 1980) (J.A. 73), and it is appropriate and permissible under the Eleventh Amendment. Quern v. Jordan, 440 U.S. 332 (1979).

The new federal provision leaves no doubt that the California transfer rule violates federal law now in effect, and has violated federal law during the entire course of this litigation. Class members whose applications for eligibility will not be subject to the new provision are entitled to injunctive and declaratory relief, and to the opportunity to obtain reimbursement, where appropriate.

II. THE DECISION BELOW SHOULD BE VACATED AND REMANDED FOR THOSE MEMBERS OF THE CLASS WHO WILL APPLY ON OR AFTER JULY 1, 1981

Reversing the decision of the Court of Appeals is only appropriate for those class members who have already applied and been denied benefits, or who will apply before the effective date of the new federal statute, July 1, 1981. For those applying on or after that date, however, there will no longer be a contrary federal law. It is undeniable that states will be able to employ transfer of assets rules; the question then becomes whether the California rule meets the requirements of the federal law and regulations.

It would be inappropriate for this Court to make that determination in the present context of this case. A number of issues surrounding the new federal law will need to be resolved. For instance, what is "convincing evidence" to overcome the presumption? See section 1613(c)(2) of the Social Security Act, as added by Pub.L. 96-611, §5(a). Another problem will be establishing whether a period of ineligibility greater than 24 months "bear[s] a reasonable

relationship to [the] uncompensated value." See section 1902(j)(2) of the Social Secuirty Act, as added by Pub.L. 96-611, §5(b). HHS will have to develop regulations dealing with these and other issues, and the states will be required to submit their state plans to HHS for evaluation.

Only after these steps are undertaken over the course of the next six months will it be proper for the courts to determine whether the California provision comports with the new federal requirements. At that time, the district court can make that determination. New class representatives may need to be appointed to act on behalf of that portion of the existing class who apply after June 30, 1981 and have their claims denied. Kremens v. Bartley, 431 U.S. 119, 135 (1977).

Consequently, the appropriate course for that portion of the class is to vacate the decision of the Court of Appeals, and to remand. The case should be returned so that the district court may determine whether the California provision complies with the federal law as it is implemented on July 1, 1981.

CONCLUSION

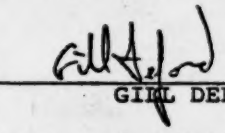
For those class members who have been denied Medi-Cal in the past, or who are still being denied Medi-Cal, or who will be denied Medi-Cal after an application made prior to July 1, 1981, the decision of the Ninth Circuit should be reversed without further briefing or argument, with the case remanded for the entry of an order enjoining the continued application of the California transfer of assets rule and providing for relief within the state administrative system to those who have already lost benefits.

For those class members who will apply after June

30, 1981 for Medi-Cal, the decision of the Ninth Circuit should be vacated and remanded without further briefing or argument, with the case remanded for further proceedings in light of the intervening federal law.

Respectfully submitted,

GILL DEFORD
NEAL S. DUDOVITZ
National Senior Citizens Law Center
1636 West 8th Street, Suite 201
Los Angeles, California 90017
(213) 388-1381

DATED: January 9, 1981. By 
GILL DEFORD

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Gill Deford, a member of the bar of the Supreme Court, do hereby certify that I have served on this 10th day of January, 1981, one copy of MOTION OF PETITIONER FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed to:

George Deukmejian, Attorney General
Thomas Warriner, Asst. Attorney General
Anne S. Pressman
Donald A. Robinson
Richard J. Magasin
Deputy Attorneys General
3580 Wilshire Blvd., Ste. 800
Los Angeles, California 90010

I further certify that all parties required to be served have been served.

Gill Deford

GILL DEFORD

Attorney for Plaintiff